

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	<b>CHARGE NO.:</b> 2009CN1465
	)	<b>EEOC NO.:</b> N/A
	)	<b>ALS NO.:</b> 09-0709
<b>IOANNIS ANGELOPOULOS,</b>	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Ioannis Angelopoulos's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CN1465; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On November 14, 2008, the Petitioner filed a charge of discrimination with the Respondent, in which he alleged his employer, the Counsel General of Greece ("Employer"), harassed him because of his citizenship status, non-U.S. citizen, in violation of Section 2-102(A), of the Illinois Human Rights Act (the "Act").
2. The Respondent initially dismissed the Petitioner's charge on June 17, 2009, for Lack of Jurisdiction. The Respondent determined that the Employer was not an "employer" within the meaning of the Act. The Respondent also determined the Petitioner was not an "employee" as defined by the Act.
3. The Petitioner filed a request for review of that dismissal on July 20, 2009.
4. On August 10, 2009, the Respondent filed its response to the Petitioner's July 2009 request for review. In its August 2009 response, the Respondent asked the Commission to vacate the dismissal of the charge and remand the charge to the Respondent so that it could conduct further investigation into the following jurisdictional issues: **(a)** Whether or not the Employer

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

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was an “employer” within the meaning of the Act ; **(b)** Whether or not the Petitioner was an “employee” within the meaning of the Act; **(c)** What was the correct basis for the Petitioner’s charge of discrimination, as it appeared there was confusion as to whether the Petitioner was alleging citizenship status discrimination, or immigration related status discrimination, which is not protected under the Act, and **(d)** Whether the Petitioner had timely filed his charge with the Respondent.

5. Thereafter, on August 17, 2009, the Commission entered an Order vacating the Respondent’s dismissal of the Petitioner’s charge, and the charge was remanded to the Respondent for further investigation.
6. On November 6, 2009, the Respondent again dismissed the Petitioner’s charge for Lack of Jurisdiction. However, now the Respondent states it lacks jurisdiction to investigate the Petitioner’s charge because the Employer is a foreign sovereign. The Respondent determined that pursuant to the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1602, the Employer was immune from suits, including suits pursuant to the Act. The Respondent made no investigation into the other jurisdictional issues it had raised in its August 2009 response.
7. It has been held that a claim of foreign sovereign immunity under the FSIA is an affirmative defense, and as such must be invoked by the party seeking to claim immunity. See Rubin v. Islamic Republic of Iran, 436 F.Supp.2d 938, 941 (N.D. Ill. 2006). Further, the party seeking to assert immunity pursuant to FSIA bears the burden of proving the applicability of the statute: “Given that the party asserting immunity bears the initial burden of establishing that immunity is available, immunity cannot... arise presumptively.” Id. at 943.
8. In the underlying charge, the Petitioner, an educator, alleged he was subjected to unequal terms and conditions by his Employer, via his supervisor, in that the Petitioner’s supervisor allegedly assigned the Petitioner more burdensome teaching duties than similarly situated teachers outside of the Petitioner’s alleged protected class.
9. In the Petitioner’s Request, the Petitioner asserts that he is being subjected to unlawful discrimination by his Employer, and that the Petitioner does not understand why the Respondent lacks jurisdiction over the case since the Petitioner lives and works in the United States.
10. In its response, the Respondent has raised the FSIA as a bar on its jurisdiction and authority to investigate the substantive allegations of the Petitioner’s charge. The Respondent contends the Employer is a foreign sovereign and is therefore immune from suit pursuant to the FSIA. The Respondent acknowledges that the FSIA provides exceptions to availability of immunity, such as waiver of immunity. However, the Respondent argues the Petitioner has presented no evidence that his charge falls within any of the exceptions enumerated in FSIA.

## **Conclusion**

The Commission has determined that the Respondent’s dismissal of the Petitioner’s charge shall be vacated, and the charge shall be remanded to the Respondent for further investigation.

As discussed above, the FSIA is an affirmative defense and its protections do not arise presumptively. There is no legal basis for the Respondent to have asserted an affirmative defense as a bar to its jurisdiction to investigate the Petitioner's allegations.

Further, the Commission finds it inappropriate and inconsistent with the law of affirmative defenses to place upon the Petitioner the burden to argue that an affirmative defense does not defeat his claim. Rather, it is the Employer's burden to argue and prove that it is entitled to immunity under the FSIA.

Finally, the applicability of the FSIA to the Petitioner's claim requires factual determinations best left to a fact-finder. Hence, it was premature for the Respondent to have determined, at the investigatory stage, that the FSIA barred the Petitioner's claim.

Therefore, the Commission orders the Respondent to further investigate this matter by making findings as to the jurisdictional issues it raised in August 2009. If the Respondent determines the Petitioner meets the jurisdictional requirements of the Act, the Respondent shall make a determination as to whether or not there is substantial evidence of discrimination.

**THEREFORE, IT IS HEREBY ORDERED THAT**

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

*This Order is not yet final and appealable.*

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 23<sup>rd</sup> day of June 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini